

**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

<b>In re:</b>  <b>INACOM CORP., et al.,</b>  <b>Debtors</b>	<b>Chapter 11</b>  <b>Bankruptcy Case No. 00-2426(PJW)</b>
<b>INACOM CORP., et al.</b>  <b>Plaintiffs</b>  <b>v.</b>  <b>DELL COMPUTER CORP.</b>  <b>Defendants</b>	  <b>Civil Action No. 04-CV-582 (GMS)</b>

**DELL INC.'S REQUEST FOR JURY TRIAL  
WITH LOCAL RULE 7.1.1 CERTIFICATION**

Defendant, Dell, Inc. f/k/a Dell Computer Corp. (“Dell”) files this Request for Jury Trial.

In support hereof, Dell respectfully shows the Court as follows.

**I.**

**Background**

1. On February 9, 2005, in that action styled *Inacom Corp. v. Lexmark International, Inc.*, Civil Action No. 04-CV-583 (GMS), Lexmark International, Inc. (“Lexmark”) filed its Motion for the Court to Order a Trial By Jury (“Lexmark’s Jury Trial Motion”) and its Opening Memorandum in Support of Lexmark’s Motion for the Court to Order A Trial By Jury (“Lexmark’s Jury Trial Opening Memorandum”). As set forth in Lexmark’s Jury Trial Motion and Lexmark’s Jury Trial Opening Memorandum, Lexmark is entitled to a jury trial on Plaintiff’s claims asserted against Lexmark and on Lexmark’s third-party claims asserted against Compaq.

2. On May 10, 2005, Lexmark; Dell; Tech Data Corp. ("Tech Data"); and Ingram Entertainment, Inc. ("Ingram Entertainment") filed their Joint Motion for the Court to Consolidate for Trial ("Joint Motion to Consolidate") and Opening Memorandum in Support of Joint Motion for the Court to Consolidate for Trial ("Joint Motion to Consolidate Opening Memorandum"), seeking that the Court consolidate for trial the following actions currently pending before this Court: (i) Case No. 04-148; *Inacom Corp. v. Tech Data Corp.*; (ii) Case No. 04-583; *Inacom Corp. v. Lexmark International, Inc.*; (iii) Case No. 04-1593; *Inacom Corp. v. Ingram Entertainment Inc.*; and (iv) Case No. 04-582; *Inacom Corp. v. Dell Computer Corp.*

## II.

### **Dell's Request for Jury Trial**

3. Dell has not filed or otherwise submitted a proof of claim to Inacom's bankruptcy estate. Therefore, Dell has not waived its Seventh Amendment right to a jury trial as to Plaintiff's claims asserted against Dell. For the same reasons Lexmark is entitled to a jury trial, as set forth in Lexmark's Jury Trial Motion and Lexmark's Jury Trial Opening Memorandum, Dell hereby moves the Court to order a trial by jury on all claims asserted by Inacom against Dell in the above-captioned action.

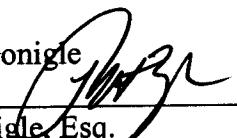
4. Additionally, as set forth in detail in the Joint Motion to Consolidate Opening Memorandum, where two or more cases are consolidated and one is accompanied by a right to a jury trial, the Court may properly grant a jury trial in both cases. *Cedars-Sinai Med. Ctr. v. Revlon, Inc.* 111 F.R.D. 24, 32 (D. Del. 1986). To the extent Lexmark's Jury Trial Motion is granted and the cases are consolidated, Dell is entitled to a jury trial as to Plaintiff's claims against Dell for this additional reason.

5. In support of Dell's Request for Jury Trial, Dell expressly adopts and incorporates by reference (i) Lexmark's Motion for Jury Trial, (ii) Lexmark's Jury Trial Opening Memorandum, (iii) the Joint Motion to Consolidate, and (iv) the Joint Motion to Consolidate Opening Memorandum. Dell relies on the foregoing motions and briefs and this motion in support of Dell's Motion for Jury Trial, and waives, pursuant to Local Rule 7.1.2, its right to file an opening brief in support hereof. Dell, however, expressly reserves its right to file a reply brief to respond to any and all arguments that Plaintiff may assert in response hereto.

WHEREFORE, PREMISES CONSIDERED, Dell prays that this Court grant this Request for Jury Trial and grant Dell such other and further relief to which it is justly entitled.

SEITZ, VAN OGTROP & GREEN, P.A.

/s/ Patricia P. McGonigle

  
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**ATTORNEYS FOR DELL, INC.**

Dated: May 11, 2005

**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

**In re:**

**INACOM CORP., et al.,**

**Debtors**

**INACOM CORP., et al.**

**Plaintiffs**

**v.**

**DELL COMPUTER CORP.**

**Defendants**

**Chapter 11**

**Bankruptcy Case No. 00-2426(PJW)**

**Civil Action No. 04-CV-582 (GMS)**

**CERTIFICATE UNDER LOCAL RULE 7.1.1**

I, G. James Landon, hereby certify that on this 11<sup>th</sup> day of May, 2005, that I e-mailed Earl Forte, Esq., counsel for Plaintiff, concerning the relief sought in Dell, Inc.'s Request for Jury Trial. Mr. Forte responded, indicating that Plaintiff opposed Dell, Inc.'s Request for Jury Trial. Counsel have made reasonable efforts to reach agreement on this motion, but have been unable to do so to date. As no agreement has been reached to date, Dell, Inc. requests the Court entertain Dell, Inc.'s Request For Jury Trial at the Court's convenience.

Respectfully Submitted,

/s/ G. James Landon

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**ATTORNEYS FOR DELL, INC.**

**CERTIFICATE OF SERVICE**

I, Patricia P. McGonigle, hereby certify that on this 12<sup>th</sup> day of May 2005, a copy of the foregoing ***Dell Inc.'s Request for Jury Trial with Local Rule 7.1.1 Certification*** was served on counsel of record as follows:

**Via First Class Mail**

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